Washington Law Review

Volume 74 | Number 4

10-1-1999

# How Many People Does It Take to Save a Drowning Baby?: A Good Samaritan Statute in Washington State

Sungeeta Jain

# HOW MANY PEOPLE DOES IT TAKE TO SAVE A DROWNING BABY?: A GOOD SAMARITAN STATUTE IN WASHINGTON STATE

Sungeeta Jain

*Abstract:* For the past three years, the Washington legislature has considered a Good Samaritan bill, nicknamed the "Joey Levick Bill," that would impose a duty to summon assistance for those known to be substantially injured. This Comment argues that the bill is minimally intrusive and should be acceptable to autonomous individuals, because it requires a bystander merely to notify the appropriate authorities is if the bystander sees someone who is substantially injured. The bill also addresses the concerns about sinister abuse of the law by criminals feigning injury, by not requiring an individual to attempt a physical rescue. In addition, the bill will likely result in an increase in the number of rescues, regardless of whether the state actively enforces the bill. Most importantly, however, the lives saved by the bill will outweigh any costs of implementation. This Comment concludes that Washington should adopt the proposed Good Samaritan bill.

In the Bible, a lawyer asked Jesus, "Master, what shall I do to inherit eternal life?"[1] In response, Jesus told the lawyer the parable of the Good Samaritan:

> A certain man went down from Jerusalem to Jericho, and fell among thieves, which stripped him of his raiment, and wounded him, and departed, leaving him half dead. And by chance there came down a certain priest that way: and when he saw him, he passed by on the other side. And likewise a Levite, when he was at that place, came and looked on him, and passed by on the other side. But a certain Samaritan, as he journeyed came where he was: and when he saw him, he had compassion on him. And went to him, and bound up his wounds, pouring in oil and wine, and set him on his own beast, and brought him to an inn and took care of him. And on the morrow when he departed, he took out two pence, and gave them to the host, and said unto him, Take care of him; and whatsoever thou spendest more, when I come again, I will repay thee.[2]

Jesus ended by asking, "Which now of these three thinkest thou, was neighbor unto him that fell among the thieves?"[3]

---

1. *Luke* 10:25 (King James).
2. *Luke* 10:30–35 (King James).
3. *Luke* 10:36 (King James).

"He that shewed mercy upon him," answered the lawyer.[4]

"Go, and do thou likewise," Jesus replied.[5]

Many civil law countries, as well as a few American states, have enacted Good Samaritan laws imposing a legal duty to rescue, requiring bystanders to come to the aid of those in peril.[6] Most American states, however, do not have Good Samaritan laws. Instead, they follow the common law "no duty to rescue" rule that states that bystanders have no duty to come to the aid of those in peril.[7] The common law rule favors individual liberty over the value of life.[8] With narrow exceptions, the no-duty-to-rescue rule allows people to watch as others are in peril without so much as lifting a finger.[9]

The drowning baby hypothetical is the traditional introduction law students have to this disconcerting rule. The hypothetical asks: If an Olympic swimmer sees a baby drowning in a pool of water, does the swimmer have a duty to rescue the baby if there is no potential for harm to the swimmer? The simple answer in most states is no; although there may be a moral duty, there is no legal duty to rescue. In Washington, there is a movement underway to change this rule.[10] As the result of one mother's outrage and dedication, a bill has been proposed in the Washington legislature that would impose a legal duty on people to summon assistance if they see someone who is substantially injured.[11]

This Comment argues that Washington should adopt the "Joey Levick Bill" because it would save lives and because the arguments against a Good Samaritan law are unfounded, especially in light of the particulars of the proposed legislation in Washington. Part I of this Comment traces the history and development of the majority no-duty-to-rescue rule and the exceptions to the rule. Part II examines the duty-to-rescue rule and

---

4. *Luke* 10:37 (King James).

5. *Luke* 10:38 (King James).

6. *See* A.D. Woozley, *A Duty to Rescue: Some Thoughts on Criminal Liability*, 69 Va. L. Rev. 1273, 1273–74 (1983); John T. Pardun, Comment, *Good Samaritan Laws: A Global Perspective*, 20 Loy. L.A. Int'l & Comp. L.J. 591, 594–97 (1998).

7. *See* Pardun, *supra* note 6, at 596.

8. *See* Peter M. Agulnick & Heidi V. Rivkin, Comment, *Criminal Liability for Failure to Rescue: A Brief Survey of French and American Law*, 8 Touro Int'l L. Rev. 93, 96 (1998).

9. *See* Charles O. Gregory, *The Good Samaritan and the Bad: The Anglo-American Law*, in *The Good Samaritan and the Law* 23, 24 (James M. Ratcliffe ed., 1966).

10. *See* John Gillie, *Transforming Family Tragedy into New Hope for Others*, News Trib. (Tacoma), Apr. 20, 1997, at B1; *see also* H.R. 1429, 56th Leg., 1st Reg. Sess. (Wash. 1999).

11. *See* H.R. 1429, 56th Leg., 1st Reg. Sess. (Wash. 1999).

the Good Samaritan statutes in Vermont, Minnesota, and Wisconsin. Part III discusses the current law in Washington and the details of the proposed legislation. Part IV evaluates the general arguments against Good Samaritan statutes and concludes that the arguments are unwarranted considering the provisions of the Washington proposal. This Comment concludes by urging the adoption of the proposed bill.

## I. THE MAJORITY RULE: NO DUTY TO RESCUE

"A number of people who stand round a shallow pond in which a child is drowning, and let it drown without taking the trouble to ascertain the depth of the pond, are, no doubt, shameful cowards, but they can hardly be said to have killed the child."[12] This hypothetical, written over one hundred years ago, sums up the current state of the law in most of the United States regarding the no-duty-to-rescue rule.[13] In general, people have no duty to aid or rescue an imperiled person even when they can perform the rescue without facing any risk.[14] A person who sees a stranger in distress has no duty to render aid or even to make a telephone call to the police.[15]

Criminal law generally does not punish for a failure to act. Traditionally, criminal law requires that an affirmative act, or an *actus reus*, be present before imposing liability for the commission of certain acts.[16] For more serious crimes, there also must be a culpable mental state, or a *mens rea*.[17] The state generally cannot support a criminal prosecution absent these requirements. Because an *actus reus* is a strict requirement, it logically follows that traditionally the law has not punished an omission or inaction.[18] Therefore, the basic thrust of the no-

12. Agulnick & Rivkin, *supra* note 8, at 96 (quoting 1 James F. Stephen, *A History of the Criminal Law of England* 10 (1883)).

13. *See id.*

14. *See* Leslie Bender, *An Overview of Feminist Torts Scholarship*, 78 Cornell L. Rev. 575, 580 (1993).

15. *See* Kathleen E. Payne, *Linking Tort Reform to Fairness and Moral Values*, 1995 Det. C.L. Rev. 1207, 1236.

16. *See* Agulnick & Rivkin, *supra* note 8, at 95.

17. *See id.*

18. *See id.*

duty-to-rescue doctrine is to absolve non-actors from legal responsibility for the consequences of their inaction.[19]

A classic example of the no-duty-to-rescue rule is *Pope v. State*,[20] where the court held that a failure to act did not constitute a crime.[21] Joyce Pope took a homeless mother and her three-month-old infant to the Pope home for the weekend after Friday night church services.[22] The young mother was suffering from a serious mental illness and was prone to episodes of violent religious frenzy.[23] On Sunday, the mother went into a frenzy, claiming she was God and that Satan had hidden himself in the baby's body.[24] She savagely beat and ripped and tore at the baby.[25] Pope was present during the entire ordeal.[26] For undisclosed reasons, however, Pope made no attempt to protect the baby, to call the authorities, or to seek medical assistance.[27] Pope went to church that evening with the mother and brought the mother back to Pope's home, where the mother spent the night.[28] Sometime during that evening, the baby died from the beating.[29] In absolving Pope of all liability, the court stated that although Pope may have been morally obligated to help the infant, she was not legally obligated to do so.[30]

### *A. Origins of the Majority Rule*

Legal historians trace the origins of the no-duty-to-rescue rule to the Western value of individual autonomy.[31] The early common law was

---

19. *See* Thomas C. Galligan, Jr., *Aiding and Altruism: A Mythopsycholegal Analysis*, 27 U. Mich. J.L. Reform 439, 441 (1994).

20. 396 A.2d 1054 (Md. 1979). This is the principal case used to introduce law students to the no-duty-to-rescue doctrine in Sanford H. Kadish & Stephen J. Schulhofer, *Criminal Law and Its Processes* 181 (6th ed. 1995).

21. *See Pope*, 396 A.2d at 1058.

22. *See id.*

23. *See id.* at 1058–59.

24. *See id.* at 1059.

25. *See id.*

26. *See id.*

27. *See id.*

28. *See id.*

29. *See id.*

30. *See id.* at 1067.

31. *See* Bender, *supra* note 14, at 580; Jay Silver, *The Duty to Rescue: A Reexamination and Proposal*, 26 Wm. & Mary L. Rev. 423, 424 (1985); Robert Justin Lipkin, Comment, *Beyond Good*

largely individualistic; people feared that judicial intervention in social and economic affairs would drain them of their self-reliance and infringe upon their individual freedom.[32] Thus, courts were reluctant to compel people to aid others in trouble.[33] The emerging spirit of capitalism, which hinged on the belief that "the struggle of selfish individuals automatically produces the common good of all"[34] reinforced this reluctance. Stemming from a desire to limit the scope of judicial intervention, the common law developed with the underlying goal of preventing people from harming others, rather than forcing them to confer benefits on one another. Under the weight of stare decisis, the common law produced the no-duty-to-rescue rule.[35]

### *B. Exceptions to the Majority Rule*

Over the decades, judicial decisions have steadily eroded the no-duty-to-rescue rule by recognizing seven exceptions in which the law imposes an affirmative duty to aid those in distress.[36] An affirmative duty to aid generally arises where there is a significant relationship between the victims and the potential rescuers.[37] This duty can be based on: (1) a personal relationship, (2) a contract, (3) creation of risk, (4) voluntary assumption of care, (5) statute, (6) control over the conduct of others, and (7) being a landowner.[38] The rationale behind these exceptions is that these relationships involve rescuers who have the ability to rescue and victims in peril who are in some way dependent on them.[39]

#### *1. Duty Based on a Personal Relationship*

Individuals in personal relationships have a duty to rescue one another.[40] The reasoning behind this exception is that these relationships

---

*Samaritans and Moral Monsters: An Individualistic Justification of the General Legal Duty to Rescue*, 31 UCLA L. Rev. 252, 276 (1983).

32. *See* Silver, *supra* note 31, at 424–25.

33. *See id.*

34. Aleksander W. Rudzinski, *The Duty to Rescue: A Comparative Analysis*, in *The Good Samaritan and the Law*, *supra* note 9, at 120.

35. *See* Silver, *supra* note 31, at 425.

36. *See* Steven J. Heyman, *Foundations of the Duty to Rescue*, 47 Vand. L. Rev. 673, 675 (1994).

37. *See* Agulnick & Rivkin, *supra* note 8, at 98.

38. *See id.* at 98–99.

39. *See* Lipkin, *supra* note 31, at 263.

40. *See* Agulnick & Rivkin, *supra* note 8, at 99.

should alert both potential rescuers and victims to the victims' right to depend on the rescuers.[41] A commonly used illustration of a relationship that falls under this exception is the parent-child relationship. Courts have long held that parents who fail to aid or protect their children are criminally liable for their inaction.[42] Some courts have imposed a similar, but less stringent, duty between husband and wife.[43] At least one court has held, however, that the couple must be legally married for the spousal duty to apply.[44] Other relationships that courts have held worthy of imposing a duty to act include masters to their servants[45] and ship captains to their crews.[46]

### 2. *Duty Based on Contract*

A contractual relationship can also be the basis for imposing a duty to rescue. This is especially true in cases where the rescuers have contracted to protect the people in peril.[47] For example, physicians have a duty to their patients,[48] baby-sitters have a duty to the children for whom they are caring,[49] and lifeguards have a duty to the swimmers at the beach they are patrolling.[50]

### 3. *Duty Based on Creating the Risk*

Even under the no-duty-to-rescue rule, the law charges people who create risks or cause dangerous situations for others with a reasonable duty to rescue. This is true regardless of whether the endangering acts

41. *See* Daniel B. Yeager, *A Radical Community of Aid: A Rejoinder to Opponents of Affirmative Duties to Help Strangers*, 71 Wash. U. L.Q. 1, 10 (1993).

42. *See, e.g.*, State v. Williquette, 385 N.W.2d 145, 154 (Wis. 1986) (finding mother guilty of child abuse for not taking action to stop her husband from repeatedly abusing her children).

43. *See* Westrup v. Commonwealth, 93 S.W. 646, 646 (Ky. 1906).

44. *See* People v. Beardsley, 113 N.W. 1128, 1131 (Mich. 1907).

45. *See* Rex v. Smith, 172 Eng. Rep. 203, 205 (1826) (discussing lack of duty between siblings but recognizing duty between master and servant).

46. *See, e.g.*, United States v. Knowles, 26 F. Cas. 800, 802 (N.D. Cal. 1864) (No. 15,540).

47. *See* Agulnick & Rivkin, *supra* note 8, at 101.

48. *See* People v. Montecino, 152 P.2d 5, 13 (Cal. Dist. Ct. App. 1944).

49. *See* Pope v. State, 396 A.2d 1054, 1063 (Md. 1979) (recognizing that babysitters owe duty to children they care for although hosts have no duty to rescue guests in their homes).

50. *See* Wayne R. LaFave & Austin W. Scott, Jr., *Criminal Law* § 3.3(a)(3) (2d ed. 1986).

were intentional or negligent.[51] Courts have gone so far as to hold that a duty to rescue arises even if the endangering acts were completely innocent.[52] Thus, where people have created risks, the law no longer considers them to be mere bystanders and imposes on them a duty to rescue.

### 4. *Duty Based upon Voluntary Assumption of Care*

People who voluntarily begin a rescue must continue helping the victim if ending the rescue effort would put the victim in a worse position than if the rescuers had not attempted the rescue in the first place.[53] A victim is put in a worse position not only if the risk of injury is heightened because of the ineffective rescue, but also if the attempted rescue dissuaded others from rendering aid.[54] The purpose of the no-duty-to-rescue rule is to protect bystanders from being punished for their inaction.[55] People who begin rescues, however, are no longer just passive bystanders; they have become actors. Therefore, the law may punish them for the results of their actions.

### 5. *Duty Based on Statute*

Many states have passed statutes requiring bystanders to render aid in specific circumstances. For example, most states have statutes requiring bystanders to assist the police on request.[56] Within constitutional limitations, state legislatures may impose a duty to rescue others even when there is no relationship between the rescuers and the victims.[57]

---

51. *See, e.g.*, Jones v. State, 43 N.E.2d 1017, 1018 (Ind. 1942) (finding defendant guilty of murder when he did nothing to rescue his rape victim who, immediately following rape, jumped into river and drowned); Commonwealth v. Cali, 141 N.E. 510, 511 (Mass. 1923) (finding defendant guilty of arson when, after accidentally starting fire, he failed to call fire department and did nothing to extinguish fire himself).

52. *See, e.g.*, Tubbs v. Argus, 225 N.E.2d 841, 843 (Ind. Ct. App. 1967) (finding driver of car involved in car accident had duty to help injured passenger despite state's guest statute that limited liability of driver for passenger's injuries).

53. *See* Silver, *supra* note 31, at 426.

54. *See* LaFave & Scott, *supra* note 50, § 3.3(a)(4).

55. *See* Agulnick & Rivkin, *supra* note 8, at 95.

56. *See* Kadish & Schulhofer, supra note 20, at 190; Anne Cucchiara Besser & Kalman J. Kaplan, *The Good Samaritan: Jewish and American Legal Perspectives*, 10 J.L. & Religion 193, 209 (1993–94).

57. *See* David C. Biggs, *"The Good Samaritan Is Packing": An Overview of the Broadened Duty to Aid Your Fellowman, with the Modern Desire to Possess Concealed Weapons*, 22 U. Dayton L. Rev. 225, 229 (1997).

### 6. *Duty to Control the Conduct of Others*

Another exception to the no-duty-to-rescue rule exists where the non-actor has control over the person causing the injury. Where the non-actor has the ability to control the person causing the danger or injury, the court looks to the relationship between the non-actor and the person causing the danger or injury in imposing a duty on the non-actor to aid the victim.[58] Courts have even imposed a duty upon psychologists to warn third persons of the potential danger posed by the psychologists' patients.[59]

### 7. *Duty Based on Being a Landowner*

Courts have held that landowners owe a duty to aid and ensure the safety of guests on their land.[60] For example, courts have held landowners who fail to use proper fire precautions on their land criminally liable in the event that guests are injured as a result of the failure.[61]

## C. *Hypothetical Illustrating the Exceptions*

To illustrate these exceptions to the no-duty-to-rescue rule, imagine four adults standing near a baby about to crawl into an open manhole. Each adult could easily protect the child without risk. One of the adults is the child's babysitter. The second adult is the one who removed the lid from the manhole. The third adult tried to cover the manhole, but gave up the effort upon discovering the lid was too heavy. The fourth adult is a pure bystander and is in the best position to restrain the baby, but has chosen to stand passively on the sidewalk, watching the events unfold. Even under the exceptions to the no-duty-to-rescue rule, the pure bystander would escape all liability despite inaction. The babysitter may be liable because of the contractual relationship to watch the child. The bystander who removed the lid from the manhole may be liable because

58. *See* Galligan, *supra* note 19, at 457. Examples of the duty to control the conduct of others include "an employer's duty to protect third parties from harmful acts of his employees, and a car-owner's duty to regulate the speed his chauffeur drives lest the car injure third parties." Agulnick & Rivkin, *supra* note 8, at 103.

59. *See, e.g.*, Tarasoff v. Regents of Univ. of Cal., 551 P.2d 334, 340 (Cal. 1976).

60. *See* LaFave & Scott, *supra* note 50, § 3.3(a)(7).

61. *See* Commonwealth v. Welansky, 55 N.E.2d 902, 910 (Mass. 1944).

of creating the risk. The adult who attempted to cover the manhole may be liable under the voluntary-assumption-of-care exception if, relying upon this attempt to rescue, other potential rescuers failed to act.

## II. THE MINORITY RULE: GOOD SAMARITAN STATUTES

In the past thirty-five years, a handful of states, including Vermont, Minnesota, and Wisconsin, have enacted statutes diverging from the majority no-duty-to-rescue rule.[62] These statutes impose on all persons a duty to assist, regardless of their relationship to the victim or perpetrator and regardless of whether they acted to create the situation.[63] In general, these statutes penalize people who fail to undertake "easy rescues," which are rescues that involve no danger to the rescuer and do not interfere with duties the rescuer owes to others.[64]

### *A. Vermont*

In 1967, Vermont became the first state to adopt a Good Samaritan statute.[65] Vermont adopted the law shortly after the brutal New York murder of Catherine "Kitty" Genovese. In an attack that lasted approximately thirty-five minutes, Genovese's assailant stabbed her to death.[66] The attack took place in the open, on the street in a middle-class neighborhood.[67] The assailant followed Genovese home in the early hours of the morning.[68] He began stabbing her but fled when she began yelling for help.[69] When her calls went unheeded, however, the assailant returned to strike again and then fled.[70] Alone, Genovese tried to crawl to her apartment. Unfortunately, the assailant returned a third time, this time killing his victim.[71] Although thirty-eight neighbors either heard or saw the assailant attacking Genovese, no one responded to her pleas for

62. *See* Yeager, *supra* note 41, at 5–8.

63. *See* Agulnick & Rivkin, *supra* note 8, at 105.

64. Yeager, *supra* note 41, at 14.

65. *See* Silver, *supra* note 31, at 426; Pardun, *supra* note 6, at 598.

66. *See* Silver, *supra* note 31, at 423.

67. *See* Agulnick & Rivkin, *supra* note 8, at 93–94.

68. *See* Diane Kiesel, *Who Saw This Happen—States Move to Make Crime Bystanders Responsible*, 69 A.B.A. J. 1208, 1208 (1983).

69. *See id.*

70. *See id.*

71. *See id.*

help.[72] No one came to her aid.[73] No one called the police until thirty-five minutes after the first attack, by which time Genovese was already dead.[74] The public was stunned to discover that none of the spectators had violated any laws.[75]

Vermont was the only state that acted in response to the Kitty Genovese tragedy by passing a Good Samaritan law. It passed the "Duty to Aid the Endangered" Act,[76] which requires that:

> A person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to himself or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others.[77]

The statute sets the maximum penalty for failure to comply at $100.[78] The statute goes on to absolve the rescuer of all civil liability unless "his acts constitute gross negligence or unless he will receive or expects to receive remuneration."[79]

Vermont has seldom utilized its Duty to Aid the Endangered Act. The state's supreme court has interpreted the statute on only one occasion.[80] In *State v. Joyce*,[81] the Vermont Supreme Court narrowly construed the statute. The case involved a defendant who beat and kicked his son in the presence of several passive onlookers.[82] The defendant argued that because the law required intervention if the beating exposed his son to grave danger, the lack of intervention on the part of the observers was tacit approval of the defendant's conduct, or at least an indication that he was not beating his son too badly.[83] Interpreting the provision in the Vermont statute that the rescuer need not help if it would expose the

---

72. *See* Silver, *supra* note 31, at 423.

73. *See id.*

74. *See* Agulnick & Rivkin, *supra* note 8, at 94.

75. *See* Silver, *supra* note 31, at 423.

76. 1967 Vt. Acts & Resolves 309 (Adj. Sess.), § 2-4 (codified at Vt. Stat. Ann. tit. 12, § 519 (1997)).

77. Vt. Stat. Ann. tit. 12, § 519(a) (1997).

78. *See* Vt. Stat. Ann. tit. 12, § 519(c) (1997).

79. Vt. Stat. Ann. tit. 12, § 519(b) (1997).

80. *See* Pardun, *supra* note 6, at 599; *see also* State v. Joyce, 433 A.2d 271 (Vt. 1981).

81. 433 A.2d 271 (Vt. 1981).

82. *See id.* at 272–73.

83. *See id.* at 273.

rescuer to danger, the court held that a bystander need not "intervene in a fight."[84]

### *B. Minnesota*

In 1983, Minnesota adopted a Good Samaritan Law[85] similar to the Vermont statute[86] in response to a group rape that occurred in a bar near Boston.[87] The incident, which was the basis for the movie *The Accused*,[88] took place in 1983 in a Massachusetts bar.[89] Six patrons of the bar raped and sodomized a twenty-two-year-old woman as other patrons cheered.[90] The assailants dragged their victim, who was kicking and screaming, across the bar and raped her on a pool table.[91] The victim screamed, cried, and begged for someone to help her.[92] No one did.[93] Instead, the bar patrons cheered on the attackers. Barely clothed, the victim finally escaped and flagged down a truck for help.[94] Due to the absence of a Good Samaritan law in Massachusetts, prosecutors could not charge any of the spectators, not even the bartender, with a crime.[95]

The Minnesota Good Samaritan statute, which the state legislature passed the same year as the Massachusetts rape, states:

> A person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel.[96]

---

84. *Id.*
85. 1983 Minn. Law 623, Art. 2, § 1 (codified at Minn. Stat. Ann. § 604A.01 (West 1999)).
86. *See* 12 Vt. Stat. Ann. tit. 12, § 519 (1997); Yeager, *supra* note 41, at 14.
87. *See* Silver, *supra* note 31, at 427.
88. *The Accused* (Paramount Pictures 1988).
89. *See* Yeager, *supra* note 41, at 21.
90. *See id.*
91. *See id.*
92. *See id.*
93. *See id.*
94. *See id.*
95. *See id.* at 22.
96. Minn. Stat. Ann. § 604A.01 subd. 1 (West 1999).

Like the Vermont statute, the Minnesota statute absolves rescuers of civil liability unless the rescuer acts in a "willful and wanton or reckless manner."[97] A person who violates the statute may be found guilty of a petty misdemeanor and fined up to $100.[98]

Minnesota's statute differs from Vermont's Duty to Aid the Endangered Act in three significant respects. First, Minnesota limits the number of people with a duty to rescue to those who are "at the scene of an emergency";[99] the Vermont statute imposes the duty to rescue on anyone who "knows" of another in peril.[100] Second, Minnesota's statute does not explicitly alleviate the duty when others are rescuing the victim.[101] Third, the statute explicitly allows rescuers to call for medical assistance rather than physically attempt the rescue themselves.[102]

According to one news reporter, Minnesota law enforcement officials have never actually used the statute to arrest or convict anyone.[103] An original sponsor of the bill has indicated that the purpose of the legislation was largely symbolic, to set a moral standard for society.[104]

### C. *Wisconsin*

In the mid 1980s, shortly after the rape in the New Bedford bar, Wisconsin also passed a Good Samaritan statute.[105] The statute states:

> Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim.[106]

The statute absolves potential rescuers of their duty to rescue if (1) complying with the statute would endanger the rescuers or interfere

97. Minn. Stat. Ann. § 604A.01 subd. 2 (West 1999).

98. *See* Minn. Stat. Ann. § 604A.01 subd. 1.

99. Minn. Stat. Ann. § 604A.01 subd. 1.

100. Vt. Stat. Ann. tit. 12, § 519(a) (1997).

101. *See* Minn. Stat. Ann. § 604A.01 subd. 1.

102. *See* Minn. Stat. Ann. § 604A.01 subd. 1.

103. *See* Pardun, *supra* note 6, at 597 (citing Allie Shah, *How Good Is "Good Samaritan" Legislation? It's Hard to Enforce Lending Helping Hand*, Star-Trib. (Mpls.-St. Paul), Sept. 18, 1997, at 1B).

104. *See id.* at 606.

105. 1983 Wis. Laws 198, § 1 (codified at Wis. Stat. Ann. § 940.34 (West 1996)).

106. Wis. Stat. Ann. § 940.34(2)(a) (West 1996).

with duties the rescuers owe others, (2) others are providing or summoning assistance, or (3) others have reported the alleged crime to law enforcement personnel.[107] The statute further absolves from civil liability any person who provides reasonable assistance to the victim of a crime.[108]

The Wisconsin statute differs from the Minnesota and Vermont statutes in that it imposes a duty to aid only persons who are victims of crime. Therefore, in Wisconsin, for example, there would be no duty to aid a drowning baby or a stranger having a heart attack. In addition, the Wisconsin statute is narrower than the other statutes because it alleviates the burden to rescue if others have already summoned medical aid.

Similar to Vermont and Minnesota, Wisconsin law enforcement officials have seldom enforced Wisconsin's Good Samaritan statute.[109] The Wisconsin Supreme Court, however, upheld the first reported conviction under the statute in *State v. LaPlante*.[110] In *LaPlante*, a party hostess's failure to aid or summon help for a guest who was severely beaten by another guest in her presence violated the statute.[111] The court rejected LaPlante's challenge that Wisconsin's Good Samaritan statute was unconstitutionally vague.[112] *LaPlante* illustrates two major themes in the Good Samaritan law debate. First, it is constitutional to expand a duty to aid into the area of protecting strangers who are considered victims. Second, given the appropriate factual circumstances, a Good Samaritan statute can be successfully enforced.[113]

## III. THE PROPOSED WASHINGTON LAW

Currently, Washington does not have a law creating a legal duty to rescue strangers in peril.[114] Instead, Washington follows the common law

---

107. *See* Wis. Stat. Ann. § 940.34(2)(d) (West 1996).

108. *See* Wis. Stat. Ann. § 940.34(3) (West 1996).

109. *See* Pardun, *supra* note 6, at 600.

110. 521 N.W.2d 448 (Wis. 1994); *see also* Pardun, *supra* note 6, at 600.

111. *See LaPlante*, 521 N.W.2d at 449–51.

112. *See id.* at 443; Pardun, *supra* note 6, at 600.

113. *See* Biggs, *supra* note 57, at 242.

114. *See* William Dauber, *Mother of Slain Man Crusades for New Law*, Seattle Times, June 13, 1996, at B1. However, Washington has a statute imposing on individuals a duty to notify law enforcement authorities if the individuals witness a violent felony. *See* Wash. Rev. Code § 9.69.100 (1998). Persons who fail to do so face a charge of gross misdemeanor, punishable by up to one year in prison and a $5000 fine. *See* Wash. Rev. Code § 9.92.020 (1998). Some commentators have referred to this statute as a type of Good Samaritan law. *See, e.g.*, Yeager, *supra* note 41, at 6.

no-duty-to-rescue rule. In 1997 and 1998, the state House of Representatives passed a bill imposing a duty to summon assistance if a person knows of someone who is severely injured. However, both years the bill stalled in the Senate.[115] Once again, in 1999, the bill was proposed in the House of Representatives.[116]

The bill is nicknamed the "Joey Levick Bill," in memory of Joey Levick, a twenty-one-year-old student who was killed on June 2, 1994.[117] Joey was getting a ride home from a party with some friends when a fight broke out between Joey and his friends.[118] Several punches were thrown.[119] The friends, believing they had killed Joey, left him on the side of the road and fled the scene.[120] Joey, although badly hurt, was not yet dead.[121] The friends told several people what had happened and even took some of them to the scene,[122] where they discovered Joey was not dead.[123] No one did anything to help the dying man.[124] No one called 911.[125] The friends visited the scene once or twice more during the day.[126] Still, no one did anything to help Joey.[127] Finally, approximately fifteen hours after the fight had started, the mother of one of the friends called 911.[128] The authorities dispatched a police car to the scene, but it was too

---

However, from the text of the statute, the purpose appears to be catching the criminal, not aiding the victim. *See id.*

115. *See* Kathy George, *Federal Way Boy Drowns—Pals Don't Seek Help*, Seattle Post-Intelligencer, July 2, 1998, at B1 (summarizing history of Joey Levick Bill).

116. *See* H.R. 1429, 56th Leg., 1st Reg. Sess. (Wash. 1999).

117. *See* Jennifer McCoy, *Law Would Force Bystanders to Help—Parents of Slain Teen Argue for Legislation*, Seattle Times, Jan. 30, 1997, at B3.

118. *See* Amy Corneliussen, *Friends Testify They Didn't Mean for Roadside Beating to Kill Man*, News Trib. (Tacoma), Oct. 27, 1994, at B1.

119. *See id.*

120. *See id.*

121. *See id.*

122. *See* Nancy Bartley, *Innocent Bystanders No More—Victim's Parents Want Call for Help to Be Law*, Seattle Times, Dec. 13, 1996, at B1.

123. *See* Arthur C. Gorlick, *Slaying Sparks Drive for 'Joey Levick Bill'*, Seattle Post-Intelligencer, June 14, 1996, at B1.

124. *See id.*

125. *See id.*

126. *See id.*

127. *See id.*

128. *See id.*

late.[129] Joey Levick was already dead.[130] If someone had called 911 earlier, perhaps Joey would have lived.[131]

Prosecutors charged and tried Joey's friends for his murder.[132] Jason Soler and Jason Twyman, Joey's assailants, were convicted of second-degree murder.[133] Twyman is serving a twenty-five-year jail sentence.[134] The trial court, however, set aside Soler's conviction because of improper remarks made by the prosecutor in closing arguments.[135] Soler subsequently entered an *Alford* plea to first-degree manslaughter.[136]

After the trial of the two friends, many of the jurors approached the prosecutor, inquiring whether he could charge with a crime the four people who knew that Joey was hurt on the side of the road but had done nothing to help him.[137] Under the no-duty-to-rescue common law rule, however, the simple answer was "No."[138]

Upon learning that the bystanders could not be prosecuted, Joey Levick's mother started a grass-roots campaign to pass legislation that would impose upon those who see others who are substantially injured a criminal law duty to summon assistance.[139]

Although the proposed bill does not require a person physically to assist another in peril, it does require a person to summon assistance if

> (a) He or she knows that another person has suffered substantial bodily harm and is in need of assistance;

---

129. *See id.*

130. *See id.*

131. *See* Corneliussen, *supra* note 118, at B1. *But see* Barry Siegel, *Beyond the Reach of the Law*, L.A. Times, Aug. 20, 1996, at A1 (indicating that girlfriend of one defendant may have tried calling 911 earlier, but no ambulance was dispatched because of vagueness of information she gave).

132. *See* Nancy Bartley, *Accused Killer Charged with Harassment*, Seattle Times, Oct. 8, 1997, at B1.

133. *See id.*

134. *See id.*

135. *See id.*; *see also* State v. Soler, Nos. 36068-0-I, 36179-1-I, 1998 WL 300535, at *1 (Wash. Ct. App. June 8, 1998).

136. *See Man Enters Alford Plea in Slaying*, Seattle Times, Feb. 26, 1999, at B2. A defendant making an *Alford* plea denies guilt but agrees that if the case goes to trial he or she will be found guilty. *See generally* North Carolina v. Alford, 400 U.S. 25 (1970).

137. *See* Amy Corneliussen, *Jury Convicts 2 in Beating Death of Federal Way Man*, News Trib. (Tacoma), Nov. 15, 1994, at B1.

138. *See* Pardun, *supra* note 6, at 596.

139. *See* Cheryl Reid, *In Son's Memory, Mother Seeks Law; A Woman Whose Only Child Was Murdered Fights to Make It a Crime to Refuse to Render Aid*, News Trib. (Tacoma), Jan. 8, 1996, at B1.

> (b) He or she could reasonably summon assistance for the person in need without danger to himself or herself and without interference with an important duty owed to a third party;
>
> . . . and
>
> (d) Another person is not summoning assistance for the person in need.[140]

The rescuer would satisfy the duty to summon assistance by making reasonable efforts to summon medical, fire, or law enforcement authorities and identify the location of the victim.[141] Failure to adhere to the proposed bill would be a misdemeanor.[142]

The Washington bill combines many of the aspects of the Good Samaritan statutes existing in other states. The Joey Levick Bill is similar to the legislation in Minnesota and Wisconsin and unlike the Vermont statute in that it does not require the rescuer to attempt a physical rescue even when feasible. The Washington bill specifically states that the rescuer need only summon assistance. Like the Wisconsin and Vermont statutes, the bill does not create a duty if someone else is rendering the requisite assistance. In addition, similar to the Vermont and Minnesota laws, the Joey Levick Bill imposes a duty to rescue those who are substantially injured, not only victims of crimes, as in Wisconsin. The proposed legislation in Washington is also similar to the existing laws in Minnesota, Wisconsin, and Vermont in that it requires rescue only when the rescuers can do so without endangering themselves.

Had a Good Samaritan statute like the one proposed in Washington existed prior to 1994, it may have compelled the bystanders who had seen Joey Levick lying in the ditch to summon assistance earlier, perhaps saving Joey's life. A similar law in Maryland at the time of the *Pope* case might have compelled Pope to call 911 after the infant's mother had assaulted the infant, perhaps resulting in emergency medical personnel rendering life-saving medical aid to the child. Similarly, had a Good Samaritan law been in effect in New York, it might have compelled

---

140. H.R. 1429, 56th Leg., 1st Reg. Sess. (Wash. 1999). The quoted text is taken from the most recent version of the bill. For a discussion of the initial draft of the legislation, see Melody J. Stewart, *How Making the Failure to Assist Illegal Fails to Assist: An Observation of Expanding Criminal Omission Liability*, 25 Am. J. Crim. L. 385, 390 (1998) (citing legislative history). A subsequent version of the bill can be found at H.R. 1186, § 1(b), 55th Leg., 1st Reg. Sess. (Wash. 1997).

141. *See* H.R. 1429, 56th Leg., 1st Reg. Sess. (Wash. 1999).

142. *See id.*

Genovese's neighbors to call police after the first attack, possibly resulting in the assailant's apprehension before he returned a second and third time.

## IV. WASHINGTON SHOULD ADOPT A GOOD SAMARITAN STATUTE

Washington should adopt the Joey Levick bill because it is minimally intrusive and thus falls within the purview of laws reasonably acceptable to autonomous individuals. The bill will not lead to sinister abuse by criminals feigning injury and will likely result in an increase in the number of rescues and the number of lives saved. In recent years, scholars have rekindled and brought to the forefront the debate over the duty to rescue.[143] Proponents on both sides of the debate have taken their pens in hand and scrawled pages of arguments, supporting their stance on whether or not there should be a Good Samaritan duty to rescue in the United States. Defenders of the no-duty-to-rescue rule (defenders) have put forth several arguments. The four most common arguments are (1) a desire for individual autonomy,[144] (2) a concern about "sinister abuse" of Good Samaritan laws,[145] (3) a skepticism regarding the actual effectiveness of a duty-to-rescue law,[146] and (4) the high cost involved in implementing an effective Good Samaritan law.[147] Although each of these arguments presents legitimate concerns, the arguments are ultimately unconvincing in the face of the proposed Washington rule.

---

143. Since the tragic 1997 death of Princess Diana in France, a country with Good Samaritan laws, the issue has once again become a point of heated debate. Photographers, who were the first to arrive at the scene of Princess Diana's accident, allegedly snapped photographs of her body instead of assisting her and her companions who were stuck in the car. As a result, authorities investigated seven photographers for possible violations of France's Good Samaritan law. *See* Agulnick & Rivkin, *supra* note 8, at 93. Also, in 1998, the much-anticipated final episode of the hit television sitcom *Seinfeld* centered around a Good Samaritan law. In the episode, Jerry, Elaine, George, and Kramer watched with amusement as a thief held up a man not more than a few feet from where they stood, stealing his car. With cellular phone and video camera in hand, they ridiculed the victim, snickering at his obesity. Their laughter soon turned to tears, as the police hauled the foursome off to jail under Latham, Massachusetts', new Good Samaritan law. *See Seinfeld* (NBC television broadcast, May 14, 1998).

144. *See* Bender, *supra* note 14, at 580; Silver, *supra* note 31, at 423; Lipkin, *supra* note 31, at 276; *infra* Part IV.A.

145. *See* Pardun, *supra* note 6, at 604–05.

146. *See* Agulnick & Rivkin, *supra* note 8, at 97.

147. *See* Payne, *supra* note 15, at 1239; Pardun, *supra* note 6, at 605.

Because the Washington bill withstands these arguments and may save lives, Washington should adopt the Joey Levick Bill.

### *A. The Good Samaritan Law Proposed in Washington Does Not Stifle Individual Autonomy*

The Washington law, by limiting the duty to a simple phone call, promotes individual freedom; it does not detract from it. Individualists argue, however, that Good Samaritan laws are undesirable because they take away from individual liberty.

Individualists argue that a no-duty-to-rescue rule allows for greater individual liberty.[148] The individual's desire to live free from government interference is deeply ingrained in the American psyche.[149] Accordingly, American lawmakers have long respected the autonomy of the individual and have been reluctant to punish for failure to rescue.[150] The individualist objection to a duty to rescue is that such a duty deprives people of their freedom to choose whether or not to rescue victims.[151] Individualists believe that requiring the performance of affirmative acts is unduly coercive and beyond the legitimate scope of government.[152] If people choose not to aid victims, society may label them "moral monsters," but under an individualist system, that is solely their concern.[153]

Consent is the hallmark of individualist political theories. Individualists believe that the consent of the governed is the basis of the state's legitimacy.[154] Individualism, however, does not require that a person's autonomy may never be abridged.[155] Clearly, laws proscribing misfeasance restrict a person's autonomy. Individualists believe that autonomous individuals are willing to accept certain limitations on their freedom as long as they receive commensurate benefits.[156] For example, autonomous individuals are willing to allow the law to prohibit them

148. *See* Agulnick & Rivkin, *supra* note 8, at 96.

149. *See id.*

150. *See id.*

151. *See* Lipkin, *supra* note 31, at 277.

152. *See* Silver, *supra* note 31, at 429.

153. Lipkin, *supra* note 31, at 277 (citing Buch v. Amory Mfg. Co., 44 A. 809, 810 (N.H. 1897)).

154. *See id.*

155. *See id.* at 287.

156. *See id.* at 288.

from interfering with or injuring others, on the condition that the law prohibits others from interfering with or injuring them.[157] The benefit gained by giving up this freedom is the assurance that within a certain realm of activities, individuals will be able to formulate, implement, and achieve their goals undisturbed.[158] This reasoning suggests that under the individualist theory, legal principles are acceptable if individuals balancing the desire for autonomy with self-interest would freely adopt them.[159]

Individualists use this balance to reject a general duty to rescue that would require people to render physical aid to those in distress in all situations. Because a general duty-to-rescue law would require rescue even where it poses a danger to the rescuer, the balance under such a law would be the risk of loss of life and permanent injury in exchange for the knowledge that the law will in turn require others to do the same on the individualist's behalf.[160] "The benefit in a dangerous rescue—saving the victim—is considerably less than certain; the burden—injury to the rescuer—is more than just possible."[161] Autonomous individuals may reasonably disagree whether a general duty to rescue in all circumstances is desirable. Therefore, such a duty is not justifiable on individualist grounds.[162]

The same individualist balance that supports legally proscribing misfeasance and rejects a general duty to rescue is not inconsistent with recognizing a duty to call 911 as proposed by the Joey Levick Bill. The simple phone call required by the Washington bill involves no danger and little time and effort. Individualists receive two kinds of benefits from a law like the one proposed in Washington. First, such a law increases the likelihood that bystanders will rescue individualists in need. Second, even if individualists never need rescue, the law gives them reason to believe that, should they need rescue, the law requires action on their behalf. This assurance helps individualists plan their activities, thereby enhancing their freedom. In exchange for this, individualists suffer only the minor inconvenience of making a toll-free call should the law ever require them to rescue others. Balancing the infringement on

157. *See id.*

158. *See id.*

159. *See id.* at 278–79.

160. *See id.* at 288.

161. *Id.* at 288–89 (footnotes omitted).

162. *See id.* at 289.

liberty against the benefits to the individual, the proposed legislation in Washington is consistent with the goals of individualism.

### *B. The Proposed Washington Law Will Not Lead to "Sinister Abuse" of a Duty to Rescue*

Defenders also express concern that if states impose a duty to rescue, criminals may wrongly use the opportunity to lure unsuspecting rescuers into traps.[163] The Washington bill addresses this concern by limiting the duty to rescue to a phone call, as opposed to requiring physical assistance.

A hypothetical scenario illustrating the possible abuse of a duty to rescue depicts a thief lying in the middle of the road, feigning an injury. An unsuspecting Good Samaritan, Anne, happens upon the scene and, compelled by legal duty, approaches the "injured" thief. Just as Anne gets close, the feigning thief jumps up and robs Anne of her purse, her belief in humanity, and her sense of security.

In today's society, such scenarios actually occur. In 1994, a Seattle deliveryman interrupted his last St. Patrick's Day delivery to stop a man from abusing his girlfriend. Unfortunately, the Good Samaritan's selfless gesture was met with four bullets from a handgun.[164] In the same year, a middle-school teacher who stopped to help a "distressed motorist" while driving to her first day of work was robbed by the man and thrown in front of moving traffic. The new teacher vowed that she would "never again" aid someone she did not know.[165] In these instances, the Good Samaritans acted out of a sense of moral duty—not legal duty—and defenders argue that imposing a legal duty to aid would only increase the number of such incidents.[166] Therefore, they urge that for reasons concerning the safety and well-being of everybody, laws imposing a duty to rescue strangers are undesirable.[167]

The Washington bill addresses this concern by allowing the Good Samaritan merely to place a phone call to the appropriate authorities

---

163. *See* Pardun, *supra* note 6, at 604–05.

164. *See* Richard Seven, *31-Year Term Given in Murder of Samaritan—Judge Cites Teen's History of Bad Choices*, Seattle Times, Dec. 24, 1994, at A1.

165. Christy Scattarella, *Good Samaritan Won't Help Again—Motorist Accused of Robbing Woman Who Stopped to Aid Him*, Seattle Times, Apr. 6, 1994, at B1.

166. *See* Pardun, *supra* note 6, at 604–05.

167. *See id.*

instead of physically helping the person in distress.[168] Under the Washington bill, those who happen upon a person lying injured in the middle of the road need not approach the "victim." Instead, the potential rescuers need only call 911 whenever it is reasonably feasible to do so.[169]

In addition, the Washington bill requires a person to act as a Good Samaritan only if "[h]e or she knows that another person has suffered substantial bodily harm and is in need of assistance."[170] The Washington bill also limits the instances where the law would require rescuers to render aid to those occasions when the rescuer can do so "without danger to himself or herself and without interference with an important duty owed to a third party."[171] Therefore, the bill would not require a person to approach the feigning thief lying in the middle of the road. Instead, the Good Samaritan could simply call the proper authorities and continue on his or her way.

The Washington bill would not require a person to act at all in the case of the delivery driver on St. Patrick's Day who stopped to break up a fight, because no one was injured at the time the Good Samaritan attempted to intervene.[172] Similarly, the bill would not have compelled the school teacher to aid the "distressed motorist" who then assaulted her, because the "victim" was not injured at the time she attempted to render aid.[173] The proposed bill in Washington would leave the decision to the actor's sense of moral duty. In addition, the Joey Levick Bill requires only a phone call; it does not require physical intervention. Therefore, even in instances where the law compels bystanders to render aid, they may do so without physical intervention, thus reducing the potential of harm to themselves. Thus, the Joey Levick Bill would not result in "sinister abuse" of the duty to rescue, because the bill limits the necessary assistance to a 911 phone call and limits the instances in which a rescuer is required to make the phone call.

168. *See* H.R. 1429, 56th Leg., 1st Reg. Sess. (Wash. 1999).

169. *See id.*

170. *Id.*

171. *Id.*

172. *See supra* note 164 and accompanying text.

173. *See supra* note 165 and accompanying text.

### C. *The Good Samaritan Law Will Effectively Change Behavior*

Defenders argue that Good Samaritan statutes are ineffective and states should not adopt them because states rarely enforce these statutes.[174] Defenders contend that laws that states seldom enforce simply clutter the books without achieving significant positive goals; therefore, states should not enact these statutes.[175] First, there is no concrete evidence to support the presumption that Washington would not enforce such a law. Second, if Washington were to enforce such a law, it would result in a change of behavior. Finally, even if Washington does not enforce the Good Samaritan law, a study has shown that the mere presence of such a law on the books will result in an increase in rescues by increasing people's sense of moral responsibility.

Defenders point to the infrequent enforcement of the existing Good Samaritan statutes in states such as Vermont, Minnesota, and Wisconsin to support the argument that even if a state did adopt a Good Samaritan statute, the statute would be ineffective because of lack of enforcement.[176] Defenders claim that bystanders fail to act for various reasons that imposing a legal duty may not address. The reasons for inaction range from fear of danger to not knowing how to help.[177] Some people may not help because they want to respect the privacy of others. Other bystanders may not rescue, as in the Genovese case, because they do not want to take the trouble to get involved in others' affairs.[178] Defenders argue that because Good Samaritan statutes are not enforced, the statutes do not provide the requisite incentive to turn bystanders into rescuers.[179]

The argument is that if people who are not otherwise inclined to rescue have to choose between either following the law by going out of their way to help strangers in need or continuing on with their daily business, thus breaking a law that states rarely enforce, people may not feel a strong enough urge to break from their daily routines. For example, most people know that there is a law against jaywalking, yet because they know that law enforcement officials do not actively enforce the law,

174. *See* Woozley, *supra* note 6, at 1276.

175. *See* Agulnick & Rivkin, *supra* note 8, at 97; Pardun, *supra* note 6, at 608.

176. *See* Stewart, *supra* note 140, at 424.

177. *See* Yeager, *supra* note 41, at 15–18.

178. *See id.* at 10 n.49.

179. *See id.* at 10; Stewart, *supra* note 140, at 424.

few people actually adhere to the law. Many people simply look both ways, and when it is safe to cross, they do so. Thus, defenders argue that if a state does not enforce a Good Samaritan law, the law will be ineffective in changing behavior and the state should not enact the law because it would simply clutter the books.[180]

In the context of the Washington bill, however, this argument is deficient. There is no basis for concluding that Washington will not actively enforce the Joey Levick Bill, if passed. The Washington courts and legislature have enunciated a strong societal policy in favor of the protection of human life.[181] Given this policy, it is likely that Washington will enforce a statute that would help save lives by requiring witnesses to call proper authorities when they see others who are substantially injured.

If Washington were to enact and enforce the Good Samaritan statute, the state will encourage rescue by setting the standard for appropriate behavior.[182] Although people may fail to act for various reasons,[183] many believe that people will act when it is in their self-interest.[184] Therefore, if inaction could result in incarceration or a fine, the law will encourage people to act in order to avoid incurring these penalties. In particular, a Good Samaritan statute will encourage action in at least three ways. First, the law will motivate bystanders to help if a police officer is in the vicinity.[185] Second, a bystander will be more inclined to render assistance if there are other witnesses around who can later testify in court against the bystander.[186] Third, even if the bystander and the victim are alone, the bystander will feel compelled to render assistance under the statute

180. *See* Agulnick & Rivkin, *supra* note 8, at 97; Pardun, *supra* note 6, at 608.

181. *See* Gardner v. Loomis Armored, Inc., 128 Wash. 2d 931, 949, 913 P.2d 377, 386 (1996) (stating that "[s]ociety places the highest priority on the protection of human life"); *see also* Wash. Rev. Code § 9.69.100 (1998) (requiring witnesses of violent crimes to report them to officials); Wash. Rev. Code §§ 7.69.010, 9.01.055, 9A.76.020, 9A.76.030 (1998) (encouraging citizens to aid law enforcement officers).

182. *See* Payne, *supra* note 15, at 1240.

183. *See* Yeager, *supra* note 41, at 15–18.

184. *See* Galligan, *supra* note 19, at 490. "Traditional Western psychological models of behavior have assumed that people act out of self-interest. For instance, Freud's psychological model of the id, ego, and the superego, with his pleasure principle playing a key role in human development, contemplated that people act in their self-interest." *Id.* at 490–91.

185. *See* Anthony D'Amato, *The "Bad Samaritan" Paradigm*, 70 Nw. U. L. Rev. 798, 809 (1976).

186. *See id.*

because if the victim escapes with his or her life, the victim can later report the bystander's violation to the authorities.[187]

Defenders argue that even if prosecutors tried to enforce a duty-to-rescue law, it would be difficult. Nonrescuers would be hard to trace, especially when the victim dies and there are no other witnesses.[188] It would also be difficult to establish whether the passive bystander actually knew of the injury or peril.[189] Prosecutors, however, face similar obstacles in enforcing other criminal laws. For example, murderers or thieves who commit their crimes without witnesses can also be difficult to trace. Also, refuting a claim of self-defense or proving *mens rea* can be as challenging as determining whether the passive bystander had actual knowledge of the injury or peril.

Even if Washington does not actively enforce the statute, the mere fact that a Good Samaritan statute exists will likely result in a change of behavior.[190] The passage of a Good Samaritan law would articulate a community standard of rescue. Some people may not help because they do not know how to help.[191] However, a legal duty to aid, even if not enforced, would likely result in an increase in helping behavior; it would decrease the ambiguity surrounding perilous situations by providing a norm for appropriate conduct.[192] In this vein, the Joey Levick bill, if passed, would inform people who might not take any action because they are unsure of what to do, what the acceptable level of action is, thus enabling them to rescue.

In addition, research demonstrates that when individuals know that they have a legal duty, they are more likely to act positively.[193] "There exists a symbiotic relationship between legal and moral rules[;] accordingly, creating a legal duty to rescue would increase the number of

187. *See id.* at 810.

188. *See* Silver, *supra* note 31, at 433.

189. *See id.*

190. However, to achieve these benefits, states must advertise the statute.

191. *See* Yeager, *supra* note 41, at 15–18.

192. *See* Viola C. Brady, Note, *The Duty to Rescue in Tort Law: Implication of Research on Altruism*, 55 Ind. L.J. 551, 557 (1980).

193. A study of students from different countries illustrated that when students knew that there was a legal duty to aid, they reacted more positively to the duty to aid and judged people's failure to aid more harshly. "Breaking the law was itself viewed as immoral, thus intensifying the opprobrium directed at the actor's behavior." Marc A. Franklin, *Vermont Requires Rescue: A Comment*, 25 Stan. L. Rev. 51, 58–59 (1973).

people who felt morally obligated to do so."[194] Therefore, regardless of whether the state enforces the statute, the law may foster a sense of moral responsibility and encourage people to render aid even though they want to respect other people's privacy or do not want to bother with other people's problems

Defenders argue that it is not the government's purpose to legislate morality. They argue that while morality may require altruism from the individual, it is not the purpose of the law to be a thread holding together the fabric of morality.[195] These defenders support their contentions by citing the early common law.[196] The early law asked merely whether the defendant had committed an act that damaged the plaintiff; it did not inquire into the blameworthiness of the defendant.[197] For example, under the early law, all killings were treated equally regardless of whether the killer had murdered in cold blood or in self-defense.[198] Under the early law, people acted at their own peril because regardless of moral culpability, courts would hold people who damaged others criminally and civilly liable.

Over time, the morally ambiguous standard of acting at one's peril has been gradually replaced by the more ethical standard of reasonable conduct.[199] Both civil and criminal laws have gradually changed so as to bring them more in harmony with ethical principles.[200] The law is no longer just a set of formal rules; it is also an expression of a society's values and concerns, and it can and ought to be used to improve those values and concerns.[201] For example, the Civil Rights Act of 1964,[202] one of the most famous reform statutes of the twentieth century, is a strong example of legal reform that was intended to make social change.[203] The Act put forth essentially two new ideas about everyday relations between

194. Payne, *supra* note 15, at 1240.

195. *See* Lipkin, *supra* note 31, at 255–57.

196. *See* James Barr Ames, *Law and Morals*, in *The Good Samaritan and the Law*, *supra* note 9, at 1.

197. *See id.* at 4.

198. *See id.* at 2. However, in the case of self-defense, although under the law the defendant was liable, the law required the judge to inform the king that the killing had occurred in self-defense. *See id.* The king in turn had the power to pardon the defendant if he so pleased. *See id.*

199. *See id.* at 4.

200. *See id.* at 20.

201. *See* Thomas B. Stoddard, *Bleeding Heart: Reflections on Using the Law to Make Social Change*, 72 N.Y.U. L. Rev. 967, 971 (1997).

202. Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. §§ 2000a–2000h (1994)).

203. *See* Stoddard, *supra* note 201, at 973.

individuals: (1) at least in the public realm, each person has rights equal to those of any other person, and (2) racial segregation is wrong.[204] These ideas created an entirely new model of conduct that deliberately overturned doctrines that had been rooted in American culture for several centuries.[205]

This is not to say that subjective moral culpability is a prerequisite to criminality.[206] Courts may punish defendants even if they did not act in a subjectively blameworthy manner because of a nonculpable factual mistake.[207] For example, bigamy and statutory rape laws both impose severe prison sentences, yet neither has conventionally required a culpable state of mind.[208] The prohibition on bigamy has traditionally punished transgressors for simultaneous marriages even if they honestly believed that the first marriage had legally terminated.[209] Statutory rape has similarly punished an adult for sexual intercourse with a minor even if the adult reasonably believed the minor was old enough to consent.[210] Even in these cases, while subjective morality is not a prerequisite, an underlying purpose of these laws is to punish the inherent immorality involved in having multiple spouses or having sexual intercourse with a minor.[211] Examples such as these show that morality and legislation are not on separate ends of the spectrum, but are closely interrelated. It is not inconsistent with the way the law has evolved for a state to enact a law with a moral agenda. By setting a moral standard for society, the passage of the Joey Levick Bill in Washington would likely result in an increased number of rescues whether or not the law is actively enforced.

### *D. The Benefits of a Good Samaritan Law Outweigh Any Costs*

The benefit of lives saved as a result of an effective Good Samaritan law outweighs the monetary costs. If the monetary costs seem overwhelming to a state, it can simply enact the law without active enforcement and still reap many of the benefits of the law without the

204. *See id.* at 974.

205. *See id.*

206. *See* John L. Diamond, *The Myth of Morality and Fault in Criminal Law Doctrine*, 34 Am. Crim. L. Rev. 111, 111 (1996).

207. *See* John L. Diamond, *The Crisis in the Ideology of Crime*, 31 Ind. L. Rev. 291, 292–93 (1998).

208. *See id.* at 292.

209. *See id.*

210. *See id.*

211. *See id.* at 292–93.

costs. Yet defenders of the no-duty-to-rescue rule often dwell upon the costs of implementing an effective Good Samaritan law.

Defenders argue that the money needed to investigate, arrest, and prosecute violators of Good Samaritan laws could reach outrageous amounts.[212] With a statute like the Washington bill, which encourages 911 phone calls, the cost of prosecuting violations is coupled with the costs of implementing additional emergency phone lines to accommodate the added number of phone calls reporting injury. Defenders argue that the money saved by not enacting Good Samaritan laws could be used to prosecute more serious offenders instead of violators of a duty-to-rescue statute.[213]

Aside from the monetary costs, defenders argue that imposing a duty to rescue would reduce the number of potential rescuers and hinder police investigations. The argument is that the burden of the duty would cause people to avoid situations where the law may require them to rescue a stranger.[214] In other words, "the strong swimmer would avoid the crowded beach," thus reducing the number of potential rescuers at the crowded beach.[215] In addition, defenders argue that a duty-to-rescue rule might hinder police investigations by discouraging witnesses who failed to render assistance from coming forward to help identify perpetrators.[216]

Balancing these costs against the benefits of a Good Samaritan law shows that the benefits outweigh the costs and that the statute is worthwhile. The strongest argument for adopting a duty to rescue, as well as the most evident benefit, is that the law would result in lives being saved.[217] The baby in *Pope* should not have been beaten to death by his mother with Pope passively watching. Kitty Genovese should not have had to die as a result of multiple violent attacks before one of thirty-eight spectators finally called the police. Joey Levick should not have had to lie alone in a ditch for fifteen hours, waiting for help to arrive, before he took his final breath. The value of these, as well as the countless other lives that a Good Samaritan statute could save, outweighs the costs of adopting a duty-to-rescue rule.

---

212. *See* Pardun, *supra* note 6, at 605.

213. *See id.*

214. *See* Payne, *supra* note 15, at 1239.

215. *See id.* (quoting Richard A. Posner, *Economic Analysis of Law* 174 (3d ed. 1986)).

216. *See* Agulnick & Rivkin, *supra* note 8, at 97.

217. *See* Payne, *supra* note 15, at 1241.

The fact that Good Samaritan laws can be effective without active enforcement also refutes the argument that these laws are too costly to adopt. If a state such as Washington determines that the costs of enforcing a duty-to-rescue rule outweigh the benefits of lives saved, it can simply adopt the statute without undertaking measures to enforce the statute actively, thus gaining at least some of the benefits of the rule without the cost. The primary costs in this situation would be the minimal costs of additional phone lines and having the law on the books. This is the route states like Minnesota and Wisconsin have chosen to take, implementing their largely unenforced Good Samaritan laws with the primary purpose of providing a "moral compass" to point society in the proper direction.[218]

## V. CONCLUSION

How many people does it take to save a drowning baby? Under the common law no-duty-to-rescue rule, it could take thousands, because no one person would feel compelled by law to save the baby. Under the Joey Levick Bill, however, all it would take is one Good Samaritan, fulfilling his or her duty under the law, to save the drowning baby. Although the proposed legislation in Washington is miles away from creating the kind of Good Samaritan that Jesus described in his parable to the lawyer, it is a much-needed step toward reaching the societal goal of saving lives. Thus, Washington should adopt the Joey Levick Bill. Because the bill requires that a bystander merely call 911 if the bystander sees someone who is substantially injured, it is minimally intrusive and falls within the purview of laws reasonably acceptable to autonomous individuals. In addition, by not requiring that an individual physically attempt a rescue, the bill addresses and withstands concerns about sinister abuse of the law by criminals feigning injury. Regardless of whether the state actively enforces the legislation, the bill will likely result in an increase in the number of rescues. Most importantly, saved lives will outweigh any costs of implementation.

218. *See* Pardun, *supra* note 6, at 608.